

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
:  
EYEWONDER, INC., :  
:  
Plaintiff, : No. 08 CV 3579 (GBD)  
:  
v. : ECF Case  
:  
JOHN ABRAHAM, : **AFFIDAVIT OF ERIC D.**  
:  
Defendant. : **WITKIN IN SUPPORT**  
:  
: **OF DEFENDANT'S**  
:  
: **MOTION TO EXTEND**  
:  
: **HIS TIME TO RESPOND**  
:  
: **TO THE COMPLAINT**

-----X  
STATE OF NEW YORK )  
) SS:.  
COUNTY OF NEW YORK )

ERIC D. WITKIN, being duly sworn, deposes and says:

1. I am an attorney admitted to practice in New York and in this Court. I am Special Counsel to the law firm of Littler Mendelson, P.C. which was substituted into this matter as attorneys for Defendant John Abraham ("Defendant") on Friday afternoon, May 9, 2008. I make this affidavit in support of Defendant's instant motion for an extension of his time to respond to the Complaint herein.

2. On Friday May 9, 2008, after our firm first appeared for Defendant, I contacted one of Plaintiff's attorneys Lisa Pearson of the law firm of Kilpatrick Stockton LLP, informed her of the substitution and requested a 30-day extension of Defendant's time to respond to the Complaint, as we understood that a response to the Complaint was due on Monday May 12, 2008. Ms. Pearson stated that she would check with her client and get back to me.

3. Today, after Ms. Pearson indicated that Defendant could have an additional week to respond, I sent Ms. Pearson a proposed Stipulation extending Defendant's time to answer, move against or otherwise respond to the Complaint (copy attached as Exhibit A hereto). Ms. Pearson sent back a revised Stipulation agreeing to extend Defendant's time to answer the Complaint but not to extend Defendant's time to make any other response to the Complaint, including a motion (Exhibit B hereto).

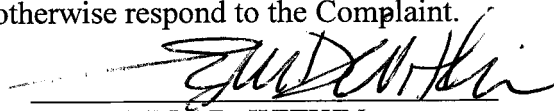
4. When I received Ms. Pearson's revised Stipulation, I telephoned her and requested that she sign the Stipulation that I had sent to her. She refused and stated that I had only asked for an extension of time to answer, and that in any event, she could not agree to anything else. I reminded her that I had asked her to extend Defendant's time to respond to the Complaint, not simply to serve an answer to it.

5. Our firm was just substituted into this case on Friday May 9, 2008, and has not had sufficient opportunity to assess, among other things, whether or not Defendant should exercise his rights to respond to the Complaint by motion rather than by serving an Answer.

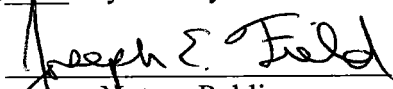
6. Defendant has made no prior request of an extension of his time to respond to the Complaint.

7. The instant motion is not intended to delay the proceedings in this matter.

8. On Defendant's behalf, I ask that the Court grant his request for an additional 30 days in which to answer, move against or otherwise respond to the Complaint.

  
ERIC D. WITKIN

Sworn to before me this  
12<sup>th</sup> day of May 2008

  
Notary Public

JOSEPH E. FIELD  
Notary Public, State of New York  
No. 31-4949589  
Qualified in New York County (j)  
Commission Expires April 17, 2011

## **EXHIBIT A**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
EYEWONDER, INC.,

Plaintiff,

v.

JOHN ABRAHAM,

Defendant.  
-----X

:  
:  
: No. 08 CV 3579 (GBD)

:  
: ECF Case

:  
: **STIPULATION AND**  
: **ORDER ADJOURNING**  
: **RESPONSE TO**  
: **COMPLAINT**  
:  
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:

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned attorneys for all the parties herein that the time in which Defendant John Abraham ("Defendant") may answer, move against or otherwise respond to the Complaint herein be and is hereby adjourned to and including May 19, 2008 without prejudice to any defenses Defendant may wish to assert.

Dated: New York, New York  
May 12, 2008

LITTLER MENDELSON, P.C.

KILPATRICK STOCKTON LLP

By: \_\_\_\_\_  
Joel L. Finger  
900 Third Avenue, 20th Floor  
New York, New York 10022  
(212) 497-8485 Phone  
(212) 832-2719 Fax

By: \_\_\_\_\_  
Lisa Pearson  
31 West 52<sup>nd</sup> Street, 14<sup>th</sup> Floor  
New York, New York 10019  
(212) 775-8700 Phone  
(212) 775-8800 Fax

SO ORDERED:

\_\_\_\_\_  
U.S.D.J.                      Date: \_\_\_\_\_

## **EXHIBIT B**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

----- x  
EYEWONDER, INC.,

Plaintiff,

v.

JOHN ABRAHAM,

Defendant.  
----- x

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: No. 08 CV 3579 (GBD)

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:  
:

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned attorneys for all the parties herein that the time in which Defendant John Abraham ("Defendant") may answer the Complaint herein be and is hereby adjourned to and including May 19, 2008 without prejudice to any defenses Defendant may wish to assert.


Dated: New York, New York  
May 12, 2008

LITTLER MENDELSON, P.C.

KILPATRICK STOCKTON LLP

By: \_\_\_\_\_

Joel L. Finger  
900 Third Avenue, 20th Floor  
New York, New York 10022  
(212) 497-8485 Phone  
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By:  \_\_\_\_\_

Lisa Pearson  
31 West 52<sup>nd</sup> Street, 14<sup>th</sup> Floor  
New York, New York 10019  
(212) 775-8700 Phone  
(212) 775-8800 Fax

SO ORDERED:

\_\_\_\_\_  
U.S.D.J.                      Date: \_\_\_\_\_